

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL)	MDL No. 146
INDUSTRY AVERAGE)	
WHOLESALE PRICE LITIGATION)	CIVIL ACTION: 01-CV-12257 PBS
)	
)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO)	
ALL CLASS ACTIONS)	Chief Magistrate Judge
)	Marianne B. Bowler

**CLASS PLAINTIFFS' MOTION TO
STRIKE DECLARATION OF ERIC M. GAIER, PH.D**

Pursuant to Fed. R. Civ. P. 26(a)(2)(B), Fed. R. Evid. 702, Fed. R. Civ. P. 23 and other applicable law, the class plaintiffs move this Court for an order striking the Declaration of Eric M. Gaier filed by the Track 1 defendants in connection with the pending Motion for Class Certification.

In support therefor, plaintiffs state that the declaration of Eric M. Gaier fails to satisfy any standard of reliability for expert testimony in these class certifications. First, Dr. Gaier lacks the education, training, or experience to testify on complicated economic issues affecting the pharmaceutical industry. Second, Dr. Gaier conceded in his deposition that fundamental flaws and defects exist in the methodology of certain of his analyses. Third, his conclusions regarding payor negotiations reflect no independent analysis. Finally, Dr. Gaier's conclusions regarding purported knowledge of the AWP to ASP spread lack any evidentiary support.

In further support of this motion, the class plaintiffs submit: (i) Class Plaintiffs' Memorandum in Support of Motion to Strike Declaration of Eric M. Gaier; and (ii) Class Plaintiffs' Appendix to Class Plaintiffs' Motions to Strike Declarations of Eric M. Gaier, Steven J. Young, and Robert P. Navarro.

Rule 7.1(A)(2) Certification

Pursuant to L.R. D. Mass. 7.1(A)(2), the undersigned counsel hereby certifies that the MDL plaintiffs' class counsel have conferred with counsel for defendants in connection with this motion and have attempted in good faith to resolve or narrow the issues involved.

DATED: December 17, 2004

By /s/ Thomas M. Sobol

Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman LLP
One Main Street, 4th Floor
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003
LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Elizabeth Hartweg Fegan
Hagens Berman LLP
60 W. Randolph Street, Suite 200
Chicago, IL 60601
Telephone: (312) 762-9235
Facsimile: (312) 762-9286

Eugene A. Spector
Jeffrey Kodroff
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Samuel D. Heins
Alan I. Gilbert
Brian L. Williams
Susan E. MacMenamin
Heins, Mills & Olson, P.C.
3550 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 338-4605
Facsimile: (612) 338-4692
CHAIRS OF LEAD COUNSEL COMMITTEE

Marc H. Edelson
Allan Hoffman
Hoffman & Edelson
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Kenneth A. Wexler
Jennifer F. Connolly
The Wexler Firm
One North LaSalle Street, Suite 2000
Chicago, IL 60602
Telephone: (312) 346-2222
Facsimile: (312) 346-0022
**MEMBERS OF LEAD COUNSEL
COMMITTEE AND EXECUTIVE
COMMITTEE**

CERTIFICATE OF SERVICE

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing **CLASS PLAINTIFFS' MOTION TO STRIKE THE DECLARATION OF ERIC M. GAIER, PH.D** to be electronically filed with the Court pursuant to the December 16, 2004 Order and to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 17, 2004 a copy to Verilaw Technologies for posting and notification to all parties.

By /s/ Thomas M. Sobol
Thomas M. Sobol
Hagens Berman, LLP
One Main Street
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003